APPEAL NO. 170967
FILED JUNE 16, 2017

This appeal arises pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq*. (1989 Act). A contested case hearing (CCH) was held on December 13, 2016, in (city), Texas, with (hearing officer 1) presiding as hearing officer. Prior to issuing a Decision and Order, (hearing officer 1) ceased to be a hearing officer with the Texas Department of Insurance, Division of Workers' Compensation (Division) and the case was reassigned to hearing officer (hearing officer 2) to listen to the recording of testimony taken at the CCH on December 13, 2016, review the evidence admitted, and write a decision to resolve the issues in dispute. The hearing officer resolved the disputed issues by deciding that: (1) the compensable injury of (date of injury), extends to a cervical strain but does not extend to a lumbar strain or a left shoulder strain; (2) the appellant (claimant) reached maximum medical improvement (MMI) on March 29, 2016, as certified by the designated doctor, (Dr. J); and (3) the claimant's impairment rating (IR) is zero percent as assigned by Dr. J.

The claimant appealed the hearing officer's determination arguing that the evidence supports a finding that the compensable injury extends to left shoulder and lumbar strains and that she has not attained MMI.

The respondent (self-insured) responded, urging affirmance.

DECISION

Reversed and remanded.

The claimant, a bus operator, testified that she was injured on (date of injury), when the bus she was operating was struck by another vehicle. The parties stipulated, in part, that the claimant sustained a compensable injury on (date of injury), and that the self-insured has accepted as compensable a left knee sprain/strain and a head contusion.

EXTENT OF INJURY

The hearing officer's determination that the compensable injury of (date of injury), extends to a cervical strain but does not extend to a lumbar strain or a left shoulder strain is supported by sufficient evidence and is affirmed.

MMI

The hearing officer's determination that the claimant reached MMI on March 29, 2016, is supported by sufficient evidence and is affirmed.

IR

Section 408.125(c) provides that the report of the designated doctor shall have presumptive weight, and the Division shall base the IR on that report unless the preponderance of the other medical evidence is to the contrary, and that, if the preponderance of the medical evidence contradicts the IR contained in the report of the designated doctor chosen by the Division, the Division shall adopt the IR of one of the other doctors. 28 TEX. ADMIN. CODE § 130.1(c)(3) (Rule 130.1(c)(3)) provides that the assignment of an IR for the current compensable injury shall be based on the injured employee's condition as of the MMI date considering the medical record and the certifying examination.

Dr. J, the designated doctor in the case, examined the claimant on March 29, 2016, and determined that the claimant reached MMI on that date. In his Report of Medical Evaluation (DWC-69) and in his accompanying narrative report, Dr. J assigned a zero percent IR for the claimant's head contusion, left knee sprain/strain and cervical strain; however, in the narrative report, Dr. J also stated, with regard to the left knee, that "[a] full physical examination with range of motion [ROM] was performed and resulted in [four percent] whole person impairment, per Table 41 [of the Guides to the Evaluation of Permanent Impairment, fourth edition (1st, 2nd, 3rd, or 4th printing, including corrections and changes as issued by the American Medical Association prior to May 16, 2000) (AMA Guides)]." Dr. J gave no explanation for his failure to include an IR on the DWC-69 dated March 29, 2016, or in his narrative report reflecting the claimant's measured ROM loss of the left knee. Therefore there is an internal inconsistency between the IR assigned on the DWC-69 and narrative report and the result of ROM testing observed and noted in Dr. J's IR narrative. For such reason, the hearing officer's determination that the claimant's IR is zero percent is reversed.

There are two other certifications of MMI/IR in evidence from (Dr. Ja), a referral of the claimant's treating doctor. Dr. Ja certified on July 21, 2016, and again on November 21, 2016, that the claimant had not reached MMI. Because we have affirmed the hearing officer's determination that the claimant reached MMI on March 29, 2016, we are unable to render a decision adopting either of these certifications. Accordingly, the issue of IR is remanded to the hearing officer for further action consistent with this decision.

REMAND INSTRUCTIONS

Dr. J is the designated doctor in this case. On remand, the hearing officer is to determine whether Dr. J is still qualified and available to be the designated doctor. If Dr. J is no longer qualified or is not available to serve as the designated doctor, then another designated doctor is to be appointed to determine the claimant's IR for the (date of injury), compensable injury as of the March 29, 2016, date of MMI.

If Dr. J is still qualified and available to serve as the designated doctor, the hearing officer will request that Dr. J assign an IR for the compensable left knee sprain/strain as instructed by the AMA Guides or explain why the four percent rating for ROM loss under Table 41 of the AMA Guides noted in his narrative report dated March 29, 2016, should not be included in the IR assigned in the DWC-69 filed with such narrative report. If a corrected DWC-69 is necessary in this case, Dr. J is also to consider and include in his assignment of IR the additional compensable conditions of cervical strain and head contusion.

The parties are to be provided with the designated doctor's response or new MMI/IR certification and are to be allowed an opportunity to respond. The hearing officer is then to make a determination on IR consistent with the evidence and this decision.

Pending resolution of the remand, a final decision has not been made in this case. However, since reversal and remand necessitate the issuance of a new decision and order by the hearing officer, a party who wishes to appeal from such new decision must file a request for review not later than 15 days after the date on which such new decision is received from the Division, pursuant to Section 410.202 which was amended June 17, 2001, to exclude Saturdays and Sundays and holidays listed in Section 662.003 of the Texas Government Code in the computation of the 15-day appeal and response periods. *See* Appeals Panel Decision 060721, decided June 12, 2006.

The true corporate name of the insurance carrier is **METROPOLITAN TRANSIT AUTHORITY HARRIS COUNTY (a self-insured governmental entity)** and the name and address of its registered agent for service of process is

PAULINE E. HIGGINS
SR. VICE PRESIDENT & GENERAL COUNSEL
1900 MAIN STREET, RM 3011
HOUSTON, TEXAS 77002.

K. Eugene Kraft
Appeals Judge

CONCUR:

Carisa Space-Beam
Appeals Judge

Margaret L. Turner
Appeals Judge